IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO.6 OF 2006

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National Heavy Engineering
Co.operative Ltd. ...Appellant

v/s.

Agro Industrial Associates
(India) ...Respondent

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Mr.Pramod Patil for the Appellant.

Mr.P.G.Hartalkar for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH AUGUST, 2006

P.C.:

1. By this appeal, the Appellant challenges the order passed by the Joint District Judge, Pune in Arbitration dated 2nd December, 2005. That order is passed by the learned Joint District Judge in a petition filed under Section 34 of the Arbitration & Conciliation Act, 1996. That petition was filed challenging the award made by the sole arbitrator dated 4-1-2004 directing the appellant to make certain payment to the Respondent. According to the learned Counsel appearing for the Appellant, the award made is contrary to the public policy of India, because the learned arbitrator has declined to take into consideration two documents on record. Perusal of the order of the learned Joint District Judge shows that he has considered these two documents in paragraph 25 of the order. According to the learned Counsel appearing for the Appellant, the reason given by the learned arbitrator is perverse and therefore, according to the learned Counsel the learned Joint District Judge should have interfered with the award in view of the judgment of the learned single Judge of this Court in the case of **Mr.Jagmohan Singh Gujral v/s. Mr.Satish Ashok Sabnis & anr., 2003 (3) All MR 488**.

2. Now, perusal of the award shows that the learned arbitrator has considered the first letter in paragraph 27 of the award and it is wrong to say that the learned arbitrator has excluded that document from consideration. Paragraph 27 of the award reads as under:-

> 27. Next contention of the Respondents is that the orders from 11 sugar factories and not 13 sugar factories for full plant were received by the claimants and that in respect of 6 factories the orders were received by the claimants for centrifugal machinery and that offers for centrifugal plant were not received from Sharad Sahakari Sakhar Karkhana Ltd. and Gurudatta Sahakari Sakhar Karkhana Ltd. through the claimants on the ground that the claimants did not help to obtain the orders from these two karkhanas. In this respect, reliance is placed on the fact that the claimants requested the Respondents to help them to get orders by approach the Chief Minister of the State of Maharashtra by using his good office in getting the orders. The contention is that it is only when the

claimants on their own secure the orders and cannot take advantage of the orders which are received because of the efforts of the Respondents such as those mentioned above in respect of two sugar factories. It is difficult to accept this submission because the claimants had played some role in securing the said two orders though the claimants did make efforts to secure the order for the Respondents. The contention of the Respondents in this behalf is, therefore, rejected. The claimants are entitled to commission in respect of the said two plants machinery sold by the Respondents to the said two factories i.e. Sharad Sahakari Sakhar Karkhana and Gurudatta Sahakari Sakhar karkhana.

3. Perusal of paragraph 27 shows that the learned arbitrator has in fact considered that document. But according to the learned arbitrator on the basis that document the claim of the Respondent for commission in respect of the two plants machinery sold by the Respondent to the two sugar factories cannot be rejected. Similarly, the learned arbitrator has

considered the other letter in paragraph 70(b) of his award and has declined to rely on that document, because the learned arbitrator found firstly that it was that it was received long after the termination of the commission agreement and the letter is of doubtful veracity.

4. In my opinion, the learned District Judge is completely justified in holding that there is no perversity in the award made by the learned arbitrator. According to the learned District Judge, evidence has been appreciated by the learned arbitrator and the court under Section 34 of the Act can not reappreciate the evidence. I do not find any patent illegality in the order impugned in the appeal. The Appeal is, therefore, dismissed. No order as to costs.

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